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No. 89-98

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

HAROLD DAVIS and ENID DAVIS,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF PETITIONERS

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QUESTION PRESENTED

Whether taxpayers' donations sent directly to an ordained missionary of a church are deductible as charitable contributions under 26 U.S.C. § 170, where such donations are made at the request and under the direction of the missionary's church, in amounts specified by the church, and with the primary purpose and effect of benefitting the church's missionary effort.

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BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a), as amended, is reported at 861 F.2d 558 (9th Cir. 1988). The opinion of the district court (Pet. App. 16a-25a) is reported at 664 F. Supp. 468 (D. Id. 1987).

JURISDICTION

The judgment of the court of appeals was entered on November 14, 1988, and an amended opinion was issued on February 21, 1989. Pet. App. 1a. Rehearing was denied on April 20, 1989. Pet. App. 27a. The petition for a writ of certiorari was filed on July 19, 1989, and the petition was granted on November 6, 1989. This Court has jurisdiction under 28 U.S.C. § 1254(1).

AUTHORITIES INVOLVED

Section 170 of the Internal Revenue Code of 1954, as amended, provides, in relevant part:

(a) Allowance of deduction.

(1) General rule. There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. . . .

(c) Charitable contribution defined.

For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

(2) A corporation, trust or community chest, fund, or foundation—

(B) Organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, ...

26 U.S.C. § 170.

Treasury Regulation 1.170A-1(g) provides, in relevant part:

(g) No deduction is allowable under Section 170 for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization contributions for which are deductible may constitute a deductible contribution. For example, . . . out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible. For the purposes of this paragraph, the phrase "while away from home" has the same meaning as that phrase is used for purposes of Section 162 and the regulations thereunder.

26 C.F.R. § 1.170A-1(g) (1989).

STATEMENT

1. Petitioners, Harold and Enid Davis, who reside in Idaho, are and were at all times relevant to this case members of The Church of Jesus Christ of Latter-day Saints (the "Church"), also known as the Mormon Church. The Church is a recognized tax-exempt organization. Pet. App. 39a. As one of its primary functions, the Church has for 160 years operated a missionary program with unpaid, full-time volunteers serving as missionaries. Inasmuch as these missionaries serve as emissaries and ministers of the Church to the people in their mission areas, they are selected according to strict standards of moral worthiness, faith, commitment, obedience and emotional fitness. Pet. App. 29a, 39a.

During the period relevant to this litigation, two of petitioners' sons—Benjamin and Cecil—were authorized to serve as church missionaries. In 1979, Benjamin Davis was interviewed by his Bishop (a leader of a local congregation) and by his Stake President (a leader of several local congregations) who determined that Benjamin was worthy and suitable to serve as a missionary for the Church. These Church officers then submitted written recommendations to Church headquarters that Benjamin be "called" or appointed as a full-time missionary. Thereafter, the President of the Church sent a letter to Benjamin calling him to serve for two years as a missionary in the New York Mission. After Benjamin accepted the call he was ordained an Elder, missionary and minister of the Church and sent to the Church's Missionary Training Center in Provo, Utah for two weeks of instruction and training. He then travelled to New York, where he labored as a missionary until December 1981. During that time, he lived and served in various areas selected by his Mission President (a leader responsible for full-time missionary operations in a particular region), but never resided for more than eight months in any single location. Pet. App. 17a, 40a-41a.

In a similar manner, Cecil Davis was called by the Church to serve as a missionary in the New Zealand Cook Islands Mission. He also accepted his call in writing and was subsequently ordained an Elder, minister and missionary of the Church. After attending the Mission-

ary Training Center, Cecil was sent to the Cook Islands in 1981, where he served for eighteen months. Pet. App. 18a, 42a. Pursuant to instructions of his mission president, Cecil never resided for any longer than six months on a single island. Pet. App. 42a.

While serving as missionaries, Benjamin and Cecil were not allowed to take vacations or to travel for personal purposes, and neither did so. Instead, they were expected to, and did, conform to a daily schedule which called for at least 10 hours per day of missionary work in addition to study time, meal time and planning time. Pet. App. 30a. Benjamin averaged over 70 hours per week of missionary work plus 10 hours per week of study and preparation. Cecil averaged 60 hours per week of missionary work plus 10 to 25 hours per week of study, including language study. Pet. App. 43a-44a. In pursuing their missionary activities, Benjamin and Cecil always presented themselves to the public as ordained ministers and agents of the Church, which is what they were. J.A. 12.

Throughout their missions, Benjamin and Cecil were subject to the direct supervision and control of their mission presidents and other Church leaders, who set rules governing their proselyting schedules, dress and grooming habits, theological and language training and other activities. Mission rules prohibited, among other things, dating, watching movies and plays and participating in certain sports. Pet. App. 3a, 30a.

2. Prior to being called to missionary service, neither Benjamin nor Cecil had saved sufficient money to pay all the costs of his mission. In such cases, it is and has long been the practice of the Church first to ask a missionary's family to contribute the necessary financing. Pet. App. 2a, 31a. If a missionary's family is unable or unwilling to contribute the necessary funds, the Church seeks donations from other Church members living in the same community as the missionary, or supplies funds

from other Church sources, so that all prospective missionaries who are willing and eligible are able to serve. Pet. App. 31a. The Church, in short, assumes final responsibility for the mission-related expenses of each missionary. Pet. App. 31a, 34a.

In this case, petitioners paid virtually all of the expenses of their sons' missions. During 1980 and 1981, petitioners donated a total of $4135 to support Benjamin's full-time missionary labors in New York, and during 1981, they donated $1518 to support Cecil's missionary work in the Cook Islands. Pet. App. 3a. Petitioners' undisputed motivation in making these contributions was "a sincere religious desire to . . . support the Church's missionary program." Pet. App. 36a.

In accordance with the Church's request, petitioners sent their contributions directly to their sons. Pet. App. 36a. When a parent or any other member of the Church donates money to defray a missionary's expenses, the Church strongly prefers that the donor send the funds directly to the missionary. Pet. App. 31a-32a. Through a century and a half of experience with its missionary program, the Church has determined that this direct transmittal of contributions has produced several specific and important benefits to the Church and its members. First, direct transmittal fosters commitment and frugality among the Church's missionaries by making them more aware of the personal sacrifices being made by the donors. Pet. App. 32a; Brief of the Church of Jesus Christ of Latter-day Saints as *Amicus Curiae* at 13. ("Brief of *Amicus Curiae*"). Knowing that his or her family bears the financial burden of a missionary's service helps to remind the missionary that the mission is a period of personal dedication, service and sacrifice. Second, direct transmittal makes the donor feel more a part of the missionary's efforts, thereby fostering and rein-

forcing the spirit of mutual sacrifice that is central to Church doctrine. Pet. App. 32a; Brief of *Amicus Curiae* at 12. This sharing in the missionary effort is particularly valuable when the missionary is a member of the donor's family. Third, direct transmittal helps preserve the venerable tradition of an unpaid lay ministry. See Brief of *Amicus Curiae* at 5. Fourth, direct transmittal reduces the risk of tax and visa problems in foreign countries. *Id.* at 13. Fifth, direct transmittal reduces the substantial administrative and bookkeeping requirements that otherwise would be imposed on the Church, thereby preserving the Church's resources for additional charitable and religious work. Pet. App. 3a, 32a; Brief of *Amicus Curiae* at 13.

The Church exercises substantial control over direct missionary donations at two levels. First, the Church specifies the amount each missionary will need and, accordingly, the amount that donors will be requested to contribute. Pet. App. 2a, 29a, 33a. The amounts requested depend upon living costs in each mission area and are set at a level that requires each missionary to be frugal. Pet. App. 32a-33a. Indeed, the Church has always encouraged frugality in order to lessen the financial burden on Church members, and because, in the Church's experience, frugality increases the dedication and effectiveness of its missionaries and promotes harmony between missionary companions. See Pet. App. 30a-31a; Brief of *Amicus Curiae* at 5. In short, the Church has found that its missionaries are most effective in their service when their expenditures are kept within the limits specified by the Church.

Second, the Church exercises substantial control over the expenditures actually made by individual missionaries. Missionaries are given specific instructions with respect to the expenditures of donated funds and are required to keep financial records of all expenditures. These financial instructions are given to each missionary on numerous occasions and are printed in a handbook that each missionary carries at all times. Pet. App. 32a-33a. To ensure that these instructions are followed, each missionary is required to submit a weekly report to his or her Mission President listing, among other things, all of his or her expenditures. Pet. App. 3a, 44a. Moreover, the Church, through the Mission President and other mission leaders, actively supervises the missionary's day-to-day activities, thereby giving the Church substantial indirect control over a missionary's expenditures.[1]

The control exercised by the Church over missionary donations is well illustrated in the present case. Shortly after each of the petitioners' sons was called as a missionary, the Church sent a letter specifying the expected level of expenses for each mission. Based on Church custom and practice, petitioners understood that these letters were intended by the Church to establish amounts that the Church desired each missionary to receive. Pet. App. 36a. Prior to the commencement of each mission, petitioners notified their bishop that they would provide the funds requested by the Church. J.A. 10. Moreover, petitioners' sons were informed, and frequently reminded, that the Church had requested that their parents (or other supporters) send them a fixed amount each month to cover only mission expenses. J.A. 12-13. In each case, the Church adjusted the specified amount as circumstances changed. See Pet. App. 37a. The amount specified for Benjamin's mission to New York averaged $290 per month in 1980 and $350 per month in 1981 (see Pet. App. 41a), and the amount specified for Cecil's mission to the Cook Islands averaged $225 per month in 1981 (see Pet. App. 42a). The charitable contribution deduc-

[1] Obviously, the Church also retains the ability to send the missionary home if he or she refuses to comply with Church policy regarding financial or other matters.

tions at issue in this case did not exceed the amounts set by the Church. Pet. App. 4a, 36a. Both missionaries in this case, moreover, made a commitment to petitioners to use the missionary funds only in accordance with the Church's instructions. Pet. App. 36a. Finally, both missionaries completed weekly reports detailing their expenditures. Pet. App. 44a. In sum, the amounts donated, the method of payment and the expenditure of donated funds were all in accordance with the requests of the Church.

3. Petitioners initially filed their income tax returns for taxable years 1980 and 1981 without claiming as charitable contribution deductions the amounts paid to finance the missionary services of their sons. In 1984, the Tenth Circuit held in *White* v. *United States*, 725 F.2d 1269, 1272 (10th Cir. 1984), that identical contributions were deductible as charitable contributions under 26 U.S.C. § 170, as long as those contributions primarily benefitted the charitable organization. Section 170 provides a deduction for contributions made "to or for the use of" a qualified charitable organization. Without deciding whether the contributions at issue were "to" or "for the use of" the Church (725 F.2d at 1270), the Tenth Circuit held that such contributions fall within Treasury Regulation 1.170A-1(g) ("Regulation (g)"), which was promulgated under Section 170. 725 F.2d at 1270. Regulation (g) permits a taxpayer to deduct as a charitable contribution "unreimbursed expenditures made incident to the rendition of services" to a qualified charitable organization. 26 C.F.R. 1.170A-1(g) (1989). The IRS treats unreimbursed expenditures deductible under Regulation (g) as contributions "to" the charity. See Rev. Rul. 84-61, 1984-1 C.B. 39; see also *Rockefeller* v. *Commissioner*, 676 F.2d 35, 37-39 (2d Cir. 1982).

In light of the *White* decision, petitioners amended their returns and filed a claim for refund with the Internal Revenue Service. When their claim was denied,

petitioners filed a refund action in the United States District Court for the District of Idaho.

While the case was pending before the district court, the Fifth Circuit ruled in *Brinley* v. *Commissioner*, 782 F.2d 1326 (5th Cir. 1986), that contributions transmitted directly to the Church's missionaries are "for the use of" the Church within the meaning of Section 170 and therefore are fully deductible provided that the Church exercises reasonable control over the contributions. *Id.* at 1334. The Fifth Circuit held that such control would be established if the taxpayer could show that the Church requested that a specified amount of money be sent to a missionary, that the taxpayer responded to that request [illegible] that the amount claimed as a deduction did not exceed the amount specified by the Church. *Id.* at 1335-36. According to that court, "full control [of the funds] [illegible] of actual or physical possession" is not required. *Id.* at 1335.[3]

The district court below expressly declined to follow either the Fifth or the Tenth Circuit's interpretations of Section 170 and Regulation (g) (Pet. App. 21a), and entered summary judgment in favor of the United States. The court concluded that a contribution by a third party to defray the costs incurred by a missionary of the Church is not "for the use of" the Church within the meaning of Section 170—and is therefore not deductible as a charitable contribution—unless the Church exercises control amounting to "possession of the contribution." Pet. App. 24a. The court also concluded that Regulation (g) applies only to unreimbursed expenses incurred in connection with the taxpayer's *own* service to a charitable organization, and therefore held that it does not apply to the contributions at issue here. Pet. App. 22a.

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[3] Alternatively, the Fifth Circuit held that, except for meals and lodging expenses, the contributions at issue were deductible as unreimbursed expenditures under Regulation (g), regardless of any control exercised by the Church. 782 F.2d at 1331. See *infra* note 18.

The court of appeals affirmed the grant of summary judgment, essentially adopting the reasoning of the district court. Like the district court, the court of appeals held that a contribution made for the purpose of paying the costs of missionary service by another is "for the use of" the Church only if the Church "possesses the funds." Pet. App. 9a. It rejected the more limited control test articulated and applied by the Fifth Circuit in *Brinley*. And like the district court, the court of appeals held that Regulation (g) applies only to unreimbursed expenses incurred in connection with the taxpayer's own service to a charitable organization. Pet. App. 13a. It thereby rejected the alternative approach articulated and applied by the Tenth Circuit in *White*. Summarizing these two holdings, the court concluded that "[t]he statutory system . . . does not provide for a deduction by a taxpayer who does not actually render service to the charity or make a contribution *directly to* the charity." (Pet. App. 15a. (Emphasis added.)

SUMMARY OF ARGUMENT

The issue in this case is whether the modest contributions petitioners sent to their sons to support the Church's missionary program are contributions "to or for the use of" the Church within the meaning of Section 170. Petitioners maintain that contributions sent directly to the Church's missionaries are deductible (1) as contributions "for the use of" the Church, as the Fifth Circuit held in *Brinley*; (2) as unreimbursed expenditures under Regulation (g) (and therefore contributions "to" the Church), as the Tenth Circuit held in *White*; or (3) as contributions "to" the Church by virtue of their having been made to the two missionaries who were acting as agents of the Church, duly authorized to accept such contributions on behalf of the Church.

1. The court of appeals erred in holding that petitioners' contributions were not "for the use of" the Church.

The court of appeals' requirement that the Church must obtain possession of the donated funds (Pet. App. 9a) is patently incorrect because it renders the phrase "for the use of" superfluous. The plain language of the statute permits a deduction for contributions made not only "to" but also "for the use of" a qualified charity, and obviously contemplates that contributions in the second category will be placed in the possession of a third party. The legislative history reveals that, by adding the words "or for the use of" to the pre-existing charitable contribution statute (which permitted deductions only for contributions made "to" a qualified charity), Congress intended just that result. The court of appeals' possession requirement is also flatly inconsistent with not only the overall structure of Section 170, but also the holdings of every other lower federal court that has addressed the question.

As the Fifth Circuit correctly held in *Brinley*, the amount of control required for a contribution to be "for the use of" a qualified charity is decidedly less than full possession. One interpretation based on the common law meaning of the phrase "for the use of" is that funds given to someone who owes a fiduciary duty to a charitable organization with respect to that money constitutes a contribution "for the use of" the charity within the meaning of Section 170. Alternatively, "for the use of" can be read to imply a requirement that the charity have sufficient control to ensure, as a practical matter, that the contribution will serve primarily the charity's own purposes rather than primarily benefit the donor or some other party. As *Brinley* indicates, this latter test is satisfied if the charity exercises substantial control over the contributions themselves as well as the uses to which the contributions are put. Unlike the court of appeals' extreme possession test, both of these alternative tests are consistent with the language, legislative history and structure of Section 170. They are also fully consistent

with the overall objective of Section 170, which is to provide a deduction for contributions that serve a genuine charitable purpose.

The contributions at issue here easily satisfy both tests. The missionaries clearly received the money solely for the purpose of furthering the Church's missionary goals and not for their personal use, thereby establishing that they received that money in a fiduciary capacity for the use and benefit of the Church. In addition, the Church exercised extraordinary control over petitioners' payments to ensure that those payments would benefit primarily the Church: Petitioners' payments were made at the request of, under the direction of and in amounts specified by the Church. The Church closely monitored the missionaries' expenditures through weekly reports. The Church also closely supervised the missionaries' day-to-day activities, further ensuring that petitioners' contributions would be used only to serve the Church's purposes. Petitioners' contributions, moreover, clearly provided a substantial benefit to the Church because they paid for proselytizing expenses that the Church otherwise would have incurred.

2. Even if the Church lacked the requisite degree of control required for a contribution "for the use of" the Church, petitioners' payments nevertheless were deductible as unreimbursed expenditures within the meaning of Regulation (g). Under the plain terms of Regulation (g), unreimbursed expenditures incident to services performed for a qualified charity are deductible as long as the expenditures primarily benefit the charity. This requirement is satisfied here. The court of appeals' holding that Regulation (g) applies only to unreimbursed expenditures incurred by the taxpayer in connection with his or her own services to a charity is contrary to the regulation's language as well as the clear weight of authority.

3. Petitioners' contributions are contributions "to" the Church under the plain language of Section 170 because they were made to agents of the Church who were specifically authorized to receive those contributions on behalf of the Church. Missionaries are unquestionably agents of the Church for certain limited purposes, such as teaching the Church's doctrines and beliefs. As demonstrated by the undisputed evidence in this case, missionaries also are agents of the Church for the purpose of accepting contributions, within the limits set by the Church, that are necessary to carry out their missionary labors. Because a charitable contribution made to an agent authorized to accept donations on behalf of the donee is equivalent to a contribution made to the donee itself, the contributions at issue here were "to" the Church within the meaning of Section 170, and therefore are deductible.

4. Finally, the rule applied by the court of appeals is both arbitrary and contrary to the Nation's long-standing tradition of religious accommodation. Under the court of appeals' reasoning, the contributions at issue here unquestionably would have been deductible if petitioners had sent them to the Church for transmittal to the missionaries, or if they had been made from the missionaries' own funds. There is no rational reason to deny a deduction merely because petitioners, at the request and under the direction of the Church, contributed their own funds directly to the missionaries. None of the administrative considerations that appear to have influenced the court of appeals—income shifting, deduction shifting, or double deductions—has any merit whatever in the context of the Church's missionary program. The only practical effect of the court of appeals' decision is to place enormous pressure on the Church to abandon its long-standing tradition of direct contributions, a tradition that has substantial religious and practical value to the Church and its members. Inasmuch as there is

no evidence, much less clear evidence, that Congress intended this result, the Court should hold that Section 170 authorizes petitioners' deductions.

ARGUMENT

It is well settled that tax provisions dealing with charitable contributions should be broadly construed to effectuate their purpose of encouraging charitable activity. *E.g.*, *Helvering* v. *Bliss*, 293 U.S. 144, 151 (1934); *Old Colony Trust Co.* v. *Commissioner*, 301 U.S. 379, 384 (1937). Chief among those provisions is Section 170, which specifies the circumstances in which a deduction for charitable contributions will be allowed. Its earliest predecessor, enacted in 1917, permitted taxpayers to deduct charitable contributions only when those contributions were made directly "to" religious, charitable, educational and similar eleemosynary organizations. See 2 B. Bittker, *Federal Taxation of Income, Estates and Gifts* ¶ 35.1.1 (1981). In 1921, however, Congress broadened the scope of the provision to permit deductions for contributions made "for the use of" such organizations. Revenue Act of 1921, ch. 136 § 214(a)(11), 42 Stat. 227, 241 (1921).

In its present form, Section 170 permits a deduction of any "gift or contribution" that is "to or for the use of" an organization identified in Section 501(c)(3) as eligible to receive charitable contributions. See, *e.g.*, 2 B. Bittker, *supra*, ¶¶ 35.1.1, 35.1.2. The government does not dispute that the Church is an eligible 501(c)(3) organization. Nor does it dispute that petitioners' payments to their missionary sons constitute a "gift" or "contribution" within the meaning of Section 170. See Brief For The United States 6 (No. 89-98 filed October 13, 1989); cf. *Hernandez* v. *Commissioner*, 109 S. Ct. 2136 (1989). This case therefore presents a single, narrow issue of statutory construction: whether petitioners' payments were "to or for the use of" the Church within the meaning of Section 170.

Petitioners' payments are deductible under any of three alternative rationales: First, payments made to the Church's missionaries are gifts or contributions "for the use of" the Church within the meaning of the statute. Second, those payments are deductible as contributions "to" the Church because, under Regulation (g), they constitute unreimbursed expenditures incurred in connection with service rendered to the Church. Third, those payments are deductible as contributions "to" the Church because missionaries are limited agents of the Church and are authorized to accept such contributions on behalf of the Church. The conclusion that these payments are deductible under Section 170 or Regulation (g) is compelled by the plain language of those provisions, especially given this Court's admonition that such provisions should be broadly construed in favor of the taxpayer.

I. PETITIONERS' CONTRIBUTIONS ARE DEDUCTIBLE UNDER SECTION 170 AS CONTRIBUTIONS "FOR THE USE OF" THE CHURCH.

The court of appeals held that a gift or contribution is "for the use of" a charitable organization only if the organization has a level of control amounting to possession of the funds. See *supra* 10; Pet. App. 9a, 15a, 24a. Thus, in the court of appeals' view, missionary contributions are deductible only if paid first to the Church and then disbursed by the Church to the missionaries. The court concluded that, because the payments at issue here were made directly to petitioners' sons and were never in the actual possession of the Church, those payments were not "for the use of" the Church. Pet. App. 15a.

The court of appeals' control standard, however, is contrary to the language, legislative history and structure of Section 170, as well as the clear weight of authority in the lower federal courts. A close analysis of the statutory language reveals that if control is re-

quired at all, the proper test is whether the charity has sufficient control to ensure that the contribution primarily benefits the charity. Because the contributions at issue here unquestionably satisfy this control requirement, those contributions were "for the use of" the Church within the meaning of Section 170.

A. The Ninth Circuit's Possession Test Of Control Is Plainly Incorrect.

1. The Ninth Circuit's requirement that the Church must physically possess a contribution for it to be deductible is a patently erroneous reading of the statute's plain language for two reasons.

First, it reduces the "for the use of" language to a mere redundancy. To require that a charity have physical possession of a gift or contribution is to require that the gift or contribution be made to the charity. The court of appeals candidly acknowledged as much when it stated that the deduction is not available to a taxpayer who does not render services to the charity *unless* the contribution is made "directly to" the charity. Pet. App. 15a. On its face, however, Section 170 provides for the deductibility of two distinct types of contributions: contributions to a qualified institution and contributions for the use of such an institution. The latter category, which was specifically added to the statute in 1921 (*infra* 20-21), necessarily assumes that the contribution is made "to" someone *other* than the charity.

By collapsing these two distinct categories of contributions, the court of appeals' interpretation violates the fundamental principle that statutes should be read to give effect to every word and phrase. See, *e.g.*, *Mountain States Tel. & Tel. Co.* v. *Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Colautti* v. *Franklin*, 439 U.S. 379, 392 (1979); *United States* v. *Menasche*, 348 U.S. 528, 538-39 (1955); 2A *Sutherland Stat. Const.* § 46.06

at 104 (4th ed. 1984). See also *Deubel* v. *Kervick*, 33 N.J. 568, 166 A.2d 561, 564 (N.J. 1960) (holding that statute exempting devises "to or for the use of" charitable institutions contemplates two distinct categories of contributions). That principle is particularly apt where, as here, the phrase at issue was specifically *added* to a preexisting statute. In short, the court of appeals' decision would effectively repeal the very words that Congress added to the statute in 1921.

Second, the court of appeals' interpretation disregards the established meaning of the phrase "for the use of." Today, as well as in 1921, that phrase describes the entire array of fiduciary relationships in which one person conveys money or property to someone else to hold or employ in some manner for the benefit of a third person.

Such relationships abound in the law. In addition to the obvious example of a trust—in which a settlor conveys property in trust to a trustee (the fiduciary) "for the use of" a beneficiary—such a relationship can arise from a third party beneficiary contract, as when A enters into a contract with B whereby B serves as personal valet to C, or installs the electrical system in C's building, or discharges a debt owed by C.[3] Such a relation-

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[3] *E.g.*, *Thomason* v. *Commissioner*, 2 T.C. 441, 444 (1943) (payment made to third party to discharge debt owed by charity would be contribution "for the use of" charity); *Board of Educ.* v. *Fred L. Ockerlund, Jr. & Associates, Inc.*, 165 Ill. App. 3d 439, 519 N.E.2d 95, 97 (Ill. App. Ct. 1988) (direct third party beneficiary contract "for the use of" such beneficiary); *Resnik* v. *Curtis and Davis, Architects & Planners, Inc.*, 58 Ill. App. 3d 28, 373 N.E.2d 772, 775 (Ill. App. Ct. 1978), *aff'd & remanded*, 400 N.E.2d 918 (1980) (Department of Public Safety of Illinois had enforceable rights as third party beneficiary under contract "for the use of" that department); *Calamari* v. *Grace*, 98 A.2d 74; 469 N.Y.S.2d 942, 946 (N.Y. App. Div. 1983) (title abstract prepared "for the use and benefit of third parties" entitles such parties to sue abstracter for negligence); *Beckovsky* v. *Burton Abstract & Title Co.*, 208 Mich. 224, 175 N.W. 235, 238 (1919) (same); *Corbin*

ship can also arise from an executorship, as when the executor of an estate (yet another kind of fiduciary) holds the decedent's property "for the use of" the decedent's heirs.[4] It can also arise from a conservatorship, guardianship or receivership, as when a conservator receives and manages property "for the use of" a minor ward.[5]

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on Contracts §§ 772-797 (one volume ed. 1952); G. Bogert, *The Law of Trusts and Trustees* § 17 at 215-31 (rev. 2d ed. 1984).

[4] *E.g.*, *Loucks* v. *Standard Oil Co.*, 224 N.Y. 99, 120 N.E. 198, (N.Y. 1918) (under New York statute, executor recovering in wrongful death action holds funds "one-half . . . to the use of the widow and one-half to the use of the children of the deceased"); *Hunter* v. *Seery*, 206 A.D. 19, 200 N.Y.S. 531, 533 (N.Y. App. Div. 1923) (under redemption statute, judgment debtor could recover property by paying amount equal to purchase price to purchaser's executor "for the use of" purchaser's estate); *In re Myers' Estate*, 238 Pa. 195, 86 A. 89, 93 (1913) (executor to hold proceeds from life insurance "for the use and benefit" of estate); Bogert § 12 at 128-146.

[5] *E.g.*, *Bradshaw* v. *Mutual Life Ins. Co.*, 205 N.Y. 467, 98 N.E. 851 (1912) (guardian to hold life insurance proceeds "for the[] use of" insured's minor children); *Gasner* v. *Pierce*, 286 Pa. 529, 134 A. 494, 496 (1926) (joint tenant collecting rent does so as receiver "for the[] joint use" of tenants); *Kurtz* v. *Lawrence*, 269 Pa. 22, 112 A. 83, 84 (1920) (receiver entitled to recover "for the use of" assignee); Bogert §§ 13-14 at 146-160.

A fiduciary or "for the use of" relationship can also arise from an equitable charge, as when A conveys a farm to B with the stipulation that B will pay C a certain amount per year from the income of the farm. *E.g.*, *Southern Ohio State Exec. Offices of Church of God* v. *Fairborn Church of God*, No. 88-71 (Ohio Ct. App. March 29, 1989) (LEXIS, States library, Ohio file) (equitable charge created where one church to manage property "for the 'sole and exclusive use and benefit' " of another church); *Victoria Bank and Trust Company* v. *Cooley*, 417 S.W.2d 814, 818 (Tex. Civ. App. 1967) (equitable charge arose under implied covenant to "use the income, profits and royalties from the land, . . . for the use and benefit of the grantors"); Bogert § 31 at 384-85. Such a relationship can also arise from a condition subsequent, as when A conveys land to B on the condition that if B ceases to use the land for C's

Fiduciary or "for the use of" relationships also frequently arise in relatively informal settings. A citizen, for example, may convey property to a government entity "for the use of" the public, in which case the government's fiduciary obligation arises not from the law of trusts or guardianships, but from the government's fiduciary duty to manage public property in the public interest. Bogert, *supra*, § 34 at 406-12 (property donated for "public use"); *Archbold* v. *United States*, 444 F.2d 1120 (Ct. Cl. 1971). Similarly, money or property may be given to a parent "for the use of" his or her children, in which case the parent, although not necessarily acquiring all the responsibilities of a trustee, acquires a fiduciary responsibility to use the funds as specified. *E.g.*, *In re Thurman*, 225 A.D. 889 (N.Y. App. Div. 1929) (testator's widow to receive funds "for the use of" testator's children). Moreover, funds may be given to attorneys, brokers, or public officials (such as a sheriff at a sheriff's sale) "for the use of" a third party, in which case such persons acquire limited fiduciary duties toward those parties. *E.g.*, *Hunter*, *supra*, 200 N.Y.S. at 533 (under redemption statute, payment to assignee or sheriff "for the use of" purchaser allow judgment debtor to recover property): *Black's Law Dictionary* 563-564 (5th ed. 1979) (attorneys, corporate directors and public officials act in fiduciary capacity holding property for others).[6] In short, the phrase "for the use of" refers to any situation in which a fiduciary relationship arises.

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benefit, the land will revert to A. *E.g.*, Bogert § 35 at 412-14; *Heaston* v. *Board of Commissioner*, 20 Ind. 398, 402 (1863) (conveyance "for the use of" another may give rise to condition subsequent, the breach of which causes the property to revert to grantor).

[6] Except when it affects interest in real property, a fiduciary or "for the use of" relationship need not be in writing. See, *e.g.*, Bogert, *supra*, § 1 at 10 (trusts); *Corbin on Contracts*, *supra*, at §§ 18, 301-16 (third party beneficiary contracts); *Victoria Bank & Trust Co.*, *supra*, 417 S.W.2d at 818 (equitable charge). Moreover, a "for the use of" relationship can arise even if the bene-

The common thread in all of these examples is that the money or property conveyed "for the use of" the beneficiary is actually placed in the possession of a third party rather than the beneficiary. The court of appeals' possesion test, therefore, is contrary to the settled principle that whenever a statute borrows a legal term of art or invokes a judicially defined concept, that term or concept should be interpreted in a manner consistent with its established meaning. *E.g.*, *Morissette* v. *United States*, 342 U.S. 246, 263 (1952). Whatever control requirement can be inferred from the words "for the use of," it clearly must be something less than actual possession.

2. The legislative history of Section 170 demonstrates that Congress meant what it said when it permitted deductions for contributions made "for the use of" a charity. The phrase, "or for the use of" was added in 1921. According to the legislative history, the immediate impetus for this modification was a ruling by the Bureau of Internal Revenue that deductions could not be taken for contributions to trusts, community chests, and other charitable foundations unless the organizations receiving the contributions were themselves tax-exempt charitable institutions, even if those contributions were to be used to benefit a qualified institution. O.D. 669, 3 C.B. 187 (1920). The driving force behind the amendment was a desire to permit deductions for contributions made to these organizations *as well as* for contributions made directly to qualified charitable corporations. See H.R. Rep. No. 350, 67th Cong., 1st Sess. 12 (1921) (House Comm. on Ways and Means); Hearings on H.R. 8245 Before

ficiary's rights are not legally enforceable. Some courts, for example, deny an intended third-party beneficiary the power to sue to enforce a contract against the promisor. *E.g.*, Bogert, *supra*, § 17 at 222-23; *Corbin on Contracts* § 772 at 724-25 (minority rule that third parties cannot enforce contracts for their benefit). He must therefore rely instead upon whatever influence he has over the promisor. Similarly, a condition subsequent was one enforceable only through self-help. *E.g.*, Bogert, *supra*, § 35 at 413.

the Senate Comm. on Finance, 87th Cong., 1st Sess. 293-95 (1921).

This history directly repudiates the court of appeals' view that Congress intended to permit a deduction only when a qualified charity obtains actual possession of the funds. If that were so, contributions made to non-qualified trusts, community chests and charitable foundations for the use and benefit of qualified charitable corporations would not be deductible because the trust, community chest or foundation—not the qualified charity—possesses those contributions at the time they are made. Under the Ninth Circuit's interpretation of Section 170, then, Congress failed to solve the very problem that it set out to correct when it added "or for the use of" to the statute.

3. The court of appeals' "actual possession" test is also flatly inconsistent with subsection 170(b) of Section 170 which limits the percentage of a taxpayer's income that qualifies for a charitable deduction. The significant feature of that provision is that it imposes a separate and stricter limit on deductions "for the use of" a charity than on deductions "to" a charity.[7] Obviously, this provision demonstrates, contrary to the holding below, that "to" and "for the use of" describe distinct categories of charitable deductions. Congress, moreover, must have been aware that the degree of control exercised by a charity

[7] Prior to 1954, a taxpayer could deduct up to 20% of adjusted gross income ("AGI") for both contributions "to" and contributions "for the use of" charitable institutions, except in certain circumstances where unlimited deductions were allowed. In 1954, however, Congress amended Section 170(b)(1)(A), to allow *additional* deductions (up to 30% of AGI) for contributions "to" charitable institutions. See, *e.g.*, H.R. No. 1337, 83rd Cong., 2d Sess. A543 (1954), *reprinted in* 1954 U.S. Code Cong. & Admin. News 4025, 4190. Today, Section 170(b) limits deductions "to" a charity to 50 percent of gross income, while limiting deductions "for the use of" a charity to 30 percent of gross income. 26 U.S.C. § 170(b)(1)(A), (B).

is necessarily lessened to some degree when the contribution is made "for the use of" the charity rather than made directly to the charity. See, *e.g.*, *Rockefeller* v. *Commissioner*, 76 T.C. 178, 190-91 (1981) (concluding, based on legislative history, that Congress allowed smaller tax deductions for "for the use of" contributions because charities would not receive funds directly). Congress thus clearly did not intend that the term "for the use of" would be limited to contributions made directly to a charity.

4. Finally, the "actual control" requirement adopted by the courts below is contrary to the clear weight of authority in the lower federal courts. Indeed, to petitioners' knowledge, *every* other federal court to address the issue has reached the conclusion that a gift or contribution made "for the use of" a qualified charity is deductible even if the qualified charity does not have actual possession of the gift or contribution. *E.g.*, *Brinley*, *supra*, 782 F.2d at 1331; *Winn* v. *Commissioner*, 595 F.2d 1060, 1065 (5th Cir. 1979); *Bauer* v. *United States*, 449 F. Supp. 755, 758 (D. La. 1978), *aff'd*, 594 F.2d 44 (5th Cir. 1979); *SICO Foundation* v. *United States*, 295 F.2d 924, 930 (Ct. Cl. 1961); *Archbold* v. *United States*, 444 F.2d 1120, 1122 (Ct. Cl. 1971).[8] In short, the courts

[8] Indeed, the Internal Revenue Service recognized this in its own regulations and decisions prior to the Second Circuit's decision in *Rockefeller* v. *Commissioner*, 676 F.2d 35 (2d Cir. 1982), which held that unreimbursed expenditures are contributions "to" rather than "for the use of" a charity. For several decades prior to that decision, the IRS took the position that unreimbursed expenses directly attributable to the performance of voluntary services for a qualified donee were "for the use of" that donee. *E.g.*, Rev. Rul. 80-45, 1980-1 C.B. 54 (unreimbursed expenditures of VITA volunteers are "for the use of" United States under Section 170(c)(1); see also *Archbold* v. *United States*, 444 F.2d 1120, 1123 (Cl. Ct. 1971) (citing Rev. Rul. 58-279, 1958-1 C.B. 145). In so ruling, the IRS plainly recognized that the beneficiaries of the services rendered never had actual possession of the out-of-pocket expenses incurred by the taxpayer in rendering those services.

below have adopted a wholly unprecedented reading of the statutory provision that is at odds with Congress's intent to expand the deduction beyond contributions "to" a charity.

B. A Contribution Made To A Third Party Is "For The Use Of" A Qualified Charity If The Charity Acquires Sufficient Control Reasonably To Ensure That The Contribution Will Primarily Benefit The Charity, As Evidenced By Substantial Control Over The Circumstances Of The Contribution As Well As The Uses To Which The Contribution Is Put.

Having rejected the Ninth Circuit's interpretation of "for the use of," it is necessary to determine the proper meaning of that phrase. As always, the plain language of the statute is the starting point. *E.g.*, *Hallstrom* v. *Tillamook County*, 58 U.S.L.W. 4007, 4009 (U.S. Nov. 7, 1989); *United States* v. *Ron Pair Enters.*, 109 S. Ct. 1026, 1030 (1989); *North Dakota* v. *United States*, 460 U.S. 300, 312 (1983). Although the phrase "for the use of" need not impose any control requirement beyond that which is implicit in a fiduciary relationship, a plausible textual argument can be made that the phrase requires that the charity have sufficient control over the contribution reasonably to ensure that the contribution will primarily serve the organization's charitable purposes, rather than the purposes of some private or non-exempt individual or entity. Unlike the court of appeals' test, this control test, which is essentially the standard applied by the Fifth Circuit in *Brinley*, comports with the structure, legislative history and purposes of Section 170. The same is true of the less stringent "fiduciary relationship" test suggested by the common-law meaning of "for the use of".

1. As previously noted (*supra* 17-20), the phrase "for the use of" is a term of art denoting any kind of fiduci-

ary relationship in which one party receives money or property for the benefit of another. It is not limited to relationships that satisfy the formal requirements of a trust, executorship, guardianship, or receivership.[9] Rather, the term "fiduciary relationship" is "[a] very broad term embracing both technical fiduciary relations and those informal relations which exist wherever one man trusts in or relies upon another." *Black's Law Dictionary* 564 (5th ed. 1979).

Given the well established meaning of the phrase "for the use of," a strong argument can be made that the phrase imposes no control requirement beyond what is inherent in the notion of a fiduciary relationship. See, *e.g.*, *Morissette* v. *United States*, *supra*, 342 U.S. at 263 (term of art should be given its established meaning). To be sure, a fiduciary's discretion over property held "for the use of" another is subject to various kinds of legal, moral and social constraints. See *supra* 17-20. But a *beneficiary* in a fiduciary relationship may have little or no control over the fiduciary, as in the case of a beneficiary of a blind trust or a minor or incompetent person. See *supra* note 6. Indeed, the phrase "for the use of" is often used interchangeably with "for the benefit of," suggesting that the only requirement is that the contribution be made to a third party fiduciary in a manner that will benefit a charitable organization.[10]

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[9] As the IRS Chief Counsel stated in his brief to the Tax Court in *Rockefeller* v. *Commissioner*, 76 T.C. 178 (1981) (a copy of which has been lodged with this Court), "[m]any payments other than payments to a trust are payments 'for the use of charity.'" Respondents' Brief in Answer, No. 9356-77, at 14 (quoting with approval *Orr* v. *United States*, 343 F.2d 553, 556-57 (5th Cir. 1965)).

[10] See, *e.g.*, *Black's Law Dictionary* 1382 (5th ed. 1979) ("'use' literally means 'benefit'"); *Deubel* v. *Kervick*, 38 N.J. 568, 166 A.2d 561, 564 (1960) ("to the use of" held to be synonymous with "for the benefit of"); 91 C.J.S. § 515 (1977) ("use" synonymous with "benefit"); *Higgins* v. *Downs*, 91 N.Y.S. 937, 101 A.D. 119 (N.Y. App. Div. 1905) ("for my son's benefit" held to mean "to the use of" said son); *Heaston* v. *Board of Commissioners*, 20 Ind. 398, 403 (1863) ("use" synonymous with "benefit"); *McAllister* v. *Long*, 206 Okla. 623, 246 P.2d 352, 354 (1952) (same).

On the other hand, a reasonable textual argument can also be made that the phrase "for the use of" requires a more substantial level of control, at least when applied to charitable contributions. See *Brinley*, 782 F.2d at 1334-36. Specifically, "for the use of" can be read to imply that the donee must have substantial (although not complete) control over the "uses" to which the property is ultimately put, a level of control that would not be required for a contribution merely to confer a benefit upon a charity.[11] It also can be read to imply that the donee will have sufficient control to ensure that the property is used or exercised in a manner consistent with the donee's benefit and enjoyment, as is frequently (though by no means always) true in fiduciary relationships. See *supra* 17-20. And, in the case of a contribution "for the use of" a charity, the word "use" can be read to imply that the contribution is to be put to a "charitable use," that is, used for the organization's charitable purposes. See, *e.g.*, *Black's Law Dictionary* 213 (5th ed. 1979).

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[11] For instance, payments made by a third party to a boys' ranch to house and feed a child under the care of an orphanage might incidentally benefit the orphanage by reducing the expenses the orphanage otherwise would incur in feeding and housing the child in its own facility. Yet those payments would not be "for the use of" the orphanage within the ordinary meaning of that phrase unless the orphanage controlled the payments. See, *e.g.*, *Thomason* v. *Commissioner*, 2 T.C. 441 (1943). See also *Mayo* v. *Commissioner*, 30 T.C.M. (CCH) 505 (1971) (denying deduction of contribution, made without any request from or control by church, to Mennonite missionary to supplement church stipend).

Thus, it could be argued that the level of control that a charitable organization must have for a contribution to be considered "for the use of" that organization is a reasonable ability to ensure that the contribution primarily serves the organization's charitable purposes.

Such control, moreover, can be fairly (and conclusively) presumed when the charity exercises substantial control not only over the circumstances under which the contribution is made ("front-end control"), but also over the uses to which the contribution is put ("back-end control"). It is virtually certain that any charity with such "front-end" as well as "back-end" control over a contribution made to a third party for the benefit of the charity will, as a practical matter, possess sufficient control to ensure that the contribution primarily serves the charity's own purposes. This reasoning thus provides at least one rationale for the Fifth Circuit's holding in *Brinley* that, in the context of the Church's missionary program (in which the Church indisputably exercises substantial back-end control over all aspects of its missionaries' activities), control sufficient to warrant a deduction would be established if the taxpayers could show front-end control, *i.e.*, "that the Church requested them to make specific payments and that they responded to these specific requests," or, in other words, that there was "a 'matching' between request and expenditure." 782 F.2d at 1335-36.[12]

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[12] Contrary to the suggestion in the opinion below (Pet. App. 12a), *Brinley* held that the taxpayers were entitled to deduct the full amount of their missionary payments if they could demonstrate control under this standard. See 782 F.2d at 1335-36. Indeed, the Internal Revenue Service, recognizing that the taxpayers in that case could easily satisfy the evidentiary burden imposed by the Fifth Circuit's decision, withdrew its objections to the deductions at issue there. See *Brinley* v. *Commissioner*, Stipulation to Decision, No. 28349-81 (U.S.T.C. October 30, 1986).

This level of control by the charitable organization is the most that is required by the plain language of Section 170, even without the benefit of this Court's admonition that charitable contribution provisions are to be read favorably to the taxpayer. See *supra* 14. Certainly, no more stringent test could be adopted if that principle of interpretation is to have any meaning in this context.

2. Both tests for deductibility—the fiduciary relationship test and the control test—are also consistent with the legislative history of the "for the use of" provision which, as discussed above (*supra* 20-21), was motivated in part by a desire to permit a deduction for contributions made to a trustee "for the use of" a charity. Unlike the court of appeals' extreme actual possession test, both of the tests described above would plainly permit a deduction for such contributions.[13] Both are also fully consistent with Section 170(b) because they recognize that contributions "for the use of" a charitable organization constitute a category of deductible contributions separate and distinct from contributions "to" a charitable organization. *Supra* 21-22.

Finally, both tests also comport with the principal purpose of Section 170, which is to permit a deduction for contributions serving genuine charitable purposes. As this Court stated in *Bob Jones University* v. *United States*, 461 U.S. 574, 591 (1983), deductions for charitable donations are justified on the ground that they "confer[] a public benefit—a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues." The

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[13] Indeed, a trust relationship requires that the beneficiary of the trust be given sufficient control (though of course not actual possession) over the corpus to ensure that it is used for his benefit or enjoyment. *E.g.*, *Restatement (Second) of Trusts* § 112 comment (a) (1959). Thus, a contribution that satisfies the requirements for a trust necessarily satisfies the control test discussed above.

Ninth Circuit's possession test excludes an entire category of such contributions, namely, those that are not made "directly to" (Pet. App. 15a) a charity. The fiduciary relationship test, by contrast, would permit a deduction whenever a contribution is made to a fiduciary for the benefit of a qualified charity. Similarly, the control test described here would permit a deduction whenever the charity has sufficient control over the contributions to ensure that the contributions primarily serve the charity's purposes, as evidenced by both front-end and back-end control over the contributions. Either test, although obviously not as stringent as the court of appeals' test, would make it virtually impossible to obtain a deduction for a contribution that does not, in fact, primarily benefit the charity.

C. Petitioners' Contributions To Their Missionary Sons Were "For The Use Of" The Church Under Any Reasonable Legal Standard.

Applying the previous analysis to the record in this case, it is clear that petitioners' contributions were "for the use of" the Church under any reasonable reading of that phrase.

First, if that phrase is given its ordinary meaning as a term of art denoting a fiduciary relationship, there is ample evidence from which to conclude that petitioners' sons acted in a fiduciary capacity in receiving petitioners' contributions. The affidavit of petitioner Harold Davis, for example, plainly indicates a fiduciary relationship:

> The money transferred by the plaintiffs to the missionaries for which a charitable contribution deduction is claimed was transferred to the missionaries because they were in fact missionaries (as opposed to being merely plaintiffs' sons), *was subject to a clear understanding and commitment by the sons that the money would be used only in accordance with Church guidelines for necessary mission-related expenditures and was not intended for the sons to use as they might see fit.* If the sons had not been missionaries or if they had not agreed to use the money in accordance with Church instructions, the plaintiffs would not have provided the money to them.

Pet. App. 36a-37a (emphasis added). Particularly when combined with other evidence of the strict obligations of loyalty and fidelity which missionaries assume vis-a-vis the Church (*supra* 3-4; Brief of *Amicus Curiae* 7-8) this uncontradicted evidence compels the conclusion that the missionaries in this case received the petitioners' contributions as fiduciaries for the use and benefit of the Church.[14]

Second, if the phrase "for the use of" is read to impose a control test similar to that applied in *Brinley*, the undisputed evidence demonstrates that the Church exercised substantial control over both the circumstances surrounding the making of the contributions as well as the uses to which those contributions were put.[15] Prior to the appointment of each missionary, petitioners agreed to

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[14] Indeed, although the Court need not reach the question (*supra* 17-20), the evidence establishes that petitioners intended to and did create a trust relationship with themselves as settlors, the Church as beneficiary, and their sons as trustees. See Bogert, *supra*, § 1 at 6 (elements of trust are (i) a beneficiary; (ii) expression of intent by settlor that property be held for benefit of beneficiary; and (iii) a trust *res*). At a minimum, the evidence in the record is sufficient to create a triable issue of fact on this issue. Cf. *Cox* v. *Commissioner*, 297 F.2d 36, 38 (2d Cir. 1961) (bequest to member of monastic order was not "for the use of" the order because no evidence that testatrix intended that recipient receive bequest in fiduciary capacity for benefit of order); *Lamson* v. *United States*, 338 F.2d 376, 378 (Ct. Cl. 1964) (same).

[15] The court of appeals stated that "other than requiring the missionaries to submit weekly reports of their expenses, the Church had no discretion over the disposition of the funds." Pet. App. 9a. As demonstrated above (*supra* 6-8), that statement obviously ignores much relevant evidence demonstrating the Church's control. It also ignores the settled rule that the record on appeal is to be read in the light most favorable to the party against whom summary judgment was entered below. *E.g.*, *Matsushita Elec. Indus. Corp.* v. *Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

provide the missionary the amount of money requested by the Church as appropriate to each mission. Pet. App. 35a. After each missionary was called, the Church sent a letter specifying the expected level of expenses for each of petitioners' sons, which petitioners understood to be the amount the Church wanted petitioners to send. Pet. App. 36a; J.A. 20. In each case, the Church adjusted the specified amount as circumstances changed. See Pet. App. 37a. After the funds were sent, the Church monitored the use of the funds sent to petitioners' sons through weekly reports submitted by the sons. Pet. App. 44a; J.A. 21. The Church also monitored the day-to-day activities of petitioners' sons through their mission presidents and other mission leaders. Pet. App. 30a, 44a.[16] These facts are sufficient to establish the deductibility of the contributions at issue here because they demonstrate both front-end and back-end control, thereby establishing that the Church exercised sufficient control over those contributions to ensure that they primarily benefitted the Church rather than petitioners or the missionaries.

Because petitioners' contributions plainly satisfy the requirements for contributions made "for the use of" the Church under any reasonable reading of Section 170, this Court should reverse the decision below and allow petitioners to deduct the claimed amounts.

II. PETITIONERS' CONTRIBUTIONS ARE DEDUCTIBLE AS CONTRIBUTIONS "TO" THE CHURCH UNDER REGULATION (g).

An alternative ground for deduction of petitioners' contributions is the one relied upon by the Tenth Circuit in *White*. The court in *White* held that, regardless

[16] The adequacy of the Church's control is further demonstrated by extensive evidence showing that petitioners' contributions—and missionary contributions in general—did primarily benefit the Church rather than petitioners or their sons and, indeed, that petitioners' payment were used to pay costs that otherwise would have been borne by the Church. See *supra* 6-8; Brief of *Amicus Curiae* at 10-11.

of whether payments to the Church's missionaries are properly considered "for the use of" the Church, they are deductible as "unreimbursed expenditures" under 26 C.F.R. § 1.170A-1(g) ("Regulation (g)"), which was promulgated in 1972. Moreover, since 1982, the IRS has treated unreimbursed expenditures as contributions "to" rather than "for the use of" a charitable organization. See Rev. Rul. 84-61, 1984-1 C.B. 39.[17]

Regulation (g) provides that "unreimbursed expenditures made incident to the rendition of services to [a charitable] organization . . . may constitute a deductible contribution." 26 C.F.R. § 1.170A-1(g). Unreimbursed expenditures are considered "incident" to the rendition of services as long as they are both "directly connected" with the rendition of services, and are primarily for the benefit of the charitable organization rather than the spender. *White*, *supra*, at 1271; *Brinley*, *supra*, at 1331-32; *Smith* v. *Commissioner*, 60 T.C. 988 (1973); *Sampson* v. *Commissioner*, 43 T.C.M. (C.C.H.) 1408 (1982), *McCollum* v. *Commissioner*, 34 T.C.M. (C.C.H.) 1817 (1978); *Davenport* v. *Commissioner*, 34 T.C.M. (C.C.H.) 1585 (1975).[18]

[17] The Tenth Circuit found it unnecessary to decide whether unreimbursed expenditures are properly considered as payments made "to" or "for the use of" the charitable organization in question. 725 F.2d at 1270. Early decisions construing the predecessor of Section 170, however, treated unreimbursed expenditures incurred incident to service provided to a charity as donations "to" the charity. *E.g.*, *Wolfe* v. *McCaughn*, 5 F. Supp. 407 (E.D. Pa. 1933) (unreimbursed expenditures of taxpayer who rendered services to YMCA in Europe during WWI deductible under Section 214(a)(11) of Revenue Act of 1918, which allowed deductions only for contributions "to" charitable organizations); *Upham* v. *Commissioner*, 16 B.T.A. 950, 951 (1929) (unreimbursed expenses incurred by a physician in traveling to meetings of the American Institute of Homeopathy "constituted contributions to" that society).

[18] Expenses for meals and lodging are deductible if the person rendering service is "away from home." 26 C.F.R. § 1.170A-1(g), 1.262-1(b)(5). The Fifth Circuit, in considering the "away from

It is undisputed that *all* of the expenditures for which deductions are claimed in this case were "directly connected" with the rendition of services by the missionaries to the Church. Thus, all of these expenditures are deductible under Regulation (g) as long as those expenditures primarily benefitted the Church. Contrary to the Ninth Circuit's position, under the Regulation it is irrelevant whether the person paying the expenses also rendered the services.

A. The Payments At Issue Were Primarily For The Benefit Of The Church.

The Tenth Circuit in *White* had "no difficulty" concluding that payments by parents to their missionary sons "primarily serve[]" the Church rather than the parents or the missionaries themselves. 725 F.2d at 1272. The Fifth Circuit reached a similar conclusion in *Brinley*. 782 F.2d at 1336. As discussed above (*supra* 6-8), the undisputed evidence compels that conclusion here as well, for four reasons.

First, the undisputed evidence shows that missionaries are agents of the Church, charged with preaching the gospel and otherwise furthering the Church's purposes in their mission areas. Pet. App. 29a-31a; see also *infra* 38-39. Contrray to the court of appeals' belief (Pet. App.

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home" language of 26 C.F.R. § 1.170A-1(g), erroneously assumed that missionaries are not away from home because they go to a single mission for more than one year. *Brinley* v. *Commissioner*, *supra*, 782 F.2d at 1333-34. Although missionaries are typically assigned to a single mission for up to 23 months after completion of training, it is Church policy to relocate missionaries every six months on the average. In this case, Benjamin was in no city more than eight months, and Cecil was in no location more than six months. Inasmuch as petitioners' sons did not live in any location for more than a year, their "tax home" remained in Idaho. See, *e.g.*, *Dean* v. *Commissioner*, 54 T.C. 663, 667 (1970); *McGimsey* v. *Commissioner*, 30 T.C.M. (CCH) 521, 524 (1971); Rev. Rul. 71-247, 1971-1 C.B. 54; see also Rev. Rul. 83-82, 1983-1 C.B. 45 (temporary stay less than one year does not shift tax home to new location).

9a), they are neither objects, recipients nor beneficiaries of the Church's charitable work. *Cf. Thomason* v. *Commissioner*, 2 T.C. 441 (1943) (denying deduction for donation to qualified welfare agency for benefit of specific individual); *Tilles* v. *Commissioner*, 38 B.T.A. 545 (1938), *aff'd*, 113 F.2d 907, *cert. denied*, 311 U.S. 703 (1940). Nor are they, in effect, students enrolled in a Church-sponsored training program. *Cf. Tripp* v. *Commissioner*, 337 F.2d 432 (7th Cir. 1964) (denying deduction for payments to college scholarship fund earmarked for particular individual); *Fausner* v. *Commmissioner*, 55 T.C. 620 (1971) (denying deduction for payments to parochial schools attended by taxpayers' children). *Haak* v. *United States*, 451 F. Supp. 1087, 78-1 USTC § 9364 (1978) (same); Rev. Rul. 54-580, 1954-2 C.B. 97. Since missionaries spend virtually all their time furthering the Church's purposes, any contributions that do no more than permit them to carry out their missionary labors primarily benefit the Church rather than the missionaries. That is unquestionably true of the contributions made in this case.

It is undisputed that the amounts requested by the Church for missionaries serving in each mission area are barely adequate to cover a missionary's living and other necessary expenses. That conclusion is borne out by examining the amounts permitted by the Church for different areas of the world. See Brief of *Amicus Curiae*, App. A. It is further borne out by the facts of this case: Cecil Davis, who received an average of little more than $225 per month, had no unexpended funds at the end of his mission (Pet. App. 43a). And Benjamin Davis, who received at most $350 per month during his two-year stay in New York, barely had enough unexpended funds at the end of his two-year mission to purchase a $150 camera (Pet. App. 42a).[19] In this case,

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[19] Petitioners do not claim a deduction for the money Benjamin spent on a camera. The only reason Benjamin had enough money

moreover, petitioners transferred their contributions with the clear understanding that the funds so transferred were to be used only in accordance with Church guidelines for necessary mission-related expenses. Pet. App. 36a-37a. This understanding further assured that the funds contributed by petitioners would be used solely for the benefit of the Church.

Second, the undisputed evidence establishes that the Church itself takes final responsibility for supporting the missionaries it calls, regardless of their ability to pay. Pet. App. 31a, 34a. Thus, the Church itself would have been obligated to support petitioners' sons on their missions if petitioners had not done so. Cf. *Tripp*, *supra* (university scholarship fund). Because their donations paid costs that the Church otherwise would incur, petitioners' donations primarily benefitted the Church rather than their missionary sons.

Third, the undisputed fact that the Church requested the amounts contributed (and deducted) by petitioners tends to show that those contributions primarily benefitted the Church's missionary efforts rather than the individual missionaries. Pet. App. 3a, 35a-36a. There would have been no reason for the Church to request those payments if they primarily benefitted the missionaries.

Fourth, the undisputed fact that *petitioners'* primary motivation was to benefit the Church's missionary effort further tends to show that their contributions primarily benefitted the Church rather than their missionary sons. Petitioner Harold Davis, for example, testified that "[t]he primary motive of the plaintiffs in providing the amounts requested by the Church was a sincere religious desire to . . . support the Church's missionary program."

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to buy a camera was that petitioners had sent him an extra $150 for that purpose, in excess of the support payments requested by the Church. See J.A. 19.

Pet. App. 36a. In short, there can be no serious question that petitioners' payments primarily benefitted the Church rather than petitioners or their sons.

B. The Person Rendering The Service Need Not Pay The Expenses.

The court of appeals held that the payments at issue here are not deductible under Regulation (g) because, in its view, that regulation does not "permit[] a deduction for unreimbursed expenses by anyone other than the taxpayer that actually performs the charitable service." That unprecedented holding is incorrect for several reasons.

First, it is inconsistent with the language of Regulation (g). The regulation provides that "unreimbursed expenditures made incident to the rendition of services to" a charitable organization are deductible. This language is unqualified. Unreimbursed expenditures made by a taxpayer incident to the rendition of services by a third party easily fall within the plain terms of the regulation. The court of appeals, however, essentially read the regulation to permit a deduction for "unreimbursed expenditures made incident to *the taxpayer's* rendition of services to" a charitable organization. But if the drafters of the regulation had intended that limitation, it would have been a simple matter to include it in the regulation's language. As the Tenth Circuit held in *White*, there is "no rational basis" under the plain language of the regulation "for distinguishing the payment of the expenses of a dependent son from the payment of a taxpayer's own expenses to perform the same services." 725 F.2d at 1271.

Second, the court of appeals' reading of Regulation (g) is contrary to numerous other decisions that expressly permit the deduction of expenses incurred in connection with the rendition of services by someone other than the taxpayer. As previously noted, both *White* and *Brinley* held that the expenses incurred by the Church's mission-

aries and paid by their parents could be deducted under Regulation (g). Both decisions, moreover, expressly rejected the government's proposed limitation on the scope of Regulation (g). *Id.*; *Brinley, supra*, 782 F.2d at 1332 ("[W]e find nothing on the face of § 1.170A-1(g) that expressly limits deductions for expenditures incurred in the rendition of charitable work to the person who actually performs the service"). Numerous other decisions have permitted a taxpayer to deduct, under Regulation (g), expenditures incurred by the taxpayer in connection with the rendition of services by someone else. *E.g.*, *Rockefeller* v. *Commissioner*, 676 F.2d 35 (2d Cir. 1982) (deduction by taxpayer for expenses incurred by both employees and non-employees); *McCollum* v. *Commissioner*, 37 T.C.M. (CCH) 1817 (1978) (deduction by taxpayer for expenses incurred in connection with services rendered by children); *Smith* v. *Commissioner*, 60 T.C. 988 (1973) (taxpayer allowed to deduct expenses incurred in purchasing meals of other missionaries).[20] Contrary to the Ninth Circuit's suggestion (Pet. App. 14a), none of those cases turned on whether the services rendered by the third party were rendered "independently" of the taxpayer's own services. To petitioners' knowledge, moreover, no decision other than decisions below has denied a deduction under Regulation (g) on the ground that someone other than the taxpayer was rendering the service at issue.

Third, the meager "legislative history" relied upon by the Ninth Circuit provides no support for its position.

[20] Indeed, it is common—and indisputably proper for a business to take a deduction for expenses incident to the rendition of services by a third party. *E.g.*, *Salt* v. *Commissioner*, 18 T.C. 182 (1952) (deduction allowed for *expenses* incurred by attorneys in representing taxpayers; Trade or Business Expenses (CCH) ¶¶ 1348.4018 (1988). Expenses incurred by attorneys incident to services rendered on behalf of clients are a prime example. There is no rational reason to treat expenses incurred in connection with rendition of charitable services any differently.

Although both of the legislative reports cited by the court (a report by the House Ways and Means Committee on the Tax Reform Act of 1986 and a report of the Joint Committee on Taxation on the Deficit Reduction Act of 1984) do state that unreimbursed expenditures incurred by the taxpayer in rendering services to a charitable organization are deductible, neither of those reports states or implies that Regulation (g) is limited to situations in which the taxpayer is the person rendering the services. See H.R. Rep. 426, 99th Cong., 1st Sess. 119 (1985); *General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984*, 98th Cong., 2d Sess. at 1133 (1984). Neither of those reports, moreover, purports to present a thorough exegesis of the regulation. In any event, the views of Congress in 1984 and 1985 are a hardly reliable authority on the meaning of a regulation adopted in 1972. *Eg.*, *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 118 (1980); *Oscar Mayer Co.* v. *Evans*, 441 U.S. 750, 758 (1979).

Similarly unpersuasive is the Ninth Circuit's assertion that permitting the deductions at issue here would allow an "assignment" to petitioners of a deduction properly claimed by petitioners' sons. Pet. App. 13a-14a. It is petitioners, not their sons, that paid the expenses incurred by the sons in connection with the sons' missionary service. Hence the Ninth Circuit's assertion simply begs the question whether a taxpayer may deduct expenses incurred in connection with the rendition of charitable services by someone other than the taxpayer.

Accordingly, petitioners' contributions were properly deducted as unreimbursed expenditures under Regulation (g). The court of appeals' contrary judgment, based as it was upon an erroneous legal standard, should be reversed.

III. BECAUSE MISSIONARIES ARE AGENTS OF THE CHURCH AND ARE AUTHORIZED TO RECEIVE PAYMENTS TO SUPPORT THEIR OWN MISSIONARY EFFORTS, SUCH PAYMENTS MADE TO THEM CONSTITUTE PAYMENTS "TO" THE CHURCH UNDER SECTION 170.

The plain language of Section 170 affords what is perhaps the most straightforward way to dispose of the issue presented in this case: Missionaries are limited agents of the Church, authorized, among other things, to receive contributions on behalf of the Church from designated individuals to support the missionaries' own efforts. Accordingly, payments such as those made by petitioners to their sons constitute payments "to" the Church within the meaning of Section 170.

1. It cannot be doubted that the Church's missionaries are agents of the Church for certain limited purposes, such as teaching the Church's doctrines and beliefs to those in the missionary's mission area. The essential elements giving rise to an agency relationship are: "[1] the manifestation by the principal that the agent shall act for him, [2] the agent's acceptance of the undertaking and [3] the understanding of the parties that the principal is to be in control of the undertaking." *Restatement (Second) of Agency* § 1 comment b (1958).

Each of those requirements is fully satisfied here. The undisputed evidence demonstrates that missionaries are selected only after interviews with local leaders of the Church to determine whether a missionary is worthy and suitable to serve as a missionary for the Church. Pet. App. 29a. Prospective missionaries are told that they will be expected to follow rigorous guidelines concerning daily schedules, expenditure of funds, proselyting schedules, theological and language training, personal activities, and dress and grooming standards. If the prospective missionary is recommended for missionary service by local leaders, the President of the Church

sends him a letter calling him to serve a mission in a geographic area specifically designated by the Church. Pet. App. 29a-30a. If the missionary accepts the assignment, he formally notifies the Church. See Pet. App. 30a. After accepting the call to serve, missionaries are appointed ministers of the Church. Pet. App. 30a. Obviously, missionaries can also be relieved of their duties and sent home if they fail to comply with the Church's instructions. See Brief of *Amicus Curiae* at 7 n.12.

In this case, then, the first requirement for an agency relationship—manifestation by the principal that the agent shall act on the principal's behalf—is satisfied by the undisputed fact that Benjamin and Cecil Davis were called and ordained as missionaries and Elders of the Church. Pet App. 40a-42a. The second requirement is satisfied by the undisputed fact that they accepted their calling to serve as missionaries for the Church. *Id.* And the third requirement—an understanding that the principal is to be in control of the undertaking—is satisfied by the undisputed fact that both young men were repeatedly instructed by the Church concerning policies with respect to missionary work and both followed these instructions fully. Pet App. 32a-33a.

2. Because the missionaries are agents of the Church, at least for purposes of rendering missionary service, the only real question is whether the agency relationship between the Church and petitioners' sons included authority to accept, on behalf of the Church, funds donated by Church members (including petitioners) or others to support them in their missionary efforts. This question was succinctly answered in a 1978 letter from the First Presidency of the Church to all Bishops, stating that "missionary support funds are considered contributions to the Church . . . and that the missionary functions as an agent of the Church in receiving such money for use in the missionary program." Letter from Spencer W. Kimball, N. Eldon Tanner, & Marion G. Romney to All Stake,

Mission, and District Presidents, Bishops and Branch Presidents in the United States (October 13, 1978) (Brief of *Amicus Curiae* at App. B).

The record in this case demonstrates that petitioners' sons had express authority to receive donations for their support up to the amounts specified by the Church. Both missionaries were informed that the Church had requested that their parents send them a fixed amount per month to cover their mission expenses. See Pet. App. 35a-36a. Each missionary received instructions from his Mission President and his Missionary Handbook as to the manner in which he would spend all support contributions which he received. Pet. App. 3a.[21] Each son also was required to report his mission expenses weekly to his mission president. Pet. App. 3a. The record also indicates that the Church's practice is to authorize missionaries to accept contributions from "those (usually the family) whom the Church has requested to provide financial assistance" to the missionary. Pet. App. 33a. Thus, although the Church could have requested that petitioners (or other donors) send all missionary contributions to Church headquarters for disbursement to the petitioners' sons, the evidence shows that the Church opted instead to authorize the missionaries to receive such funds as the Church's agents, up to the monthly amount specified by the Church.[22]

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[21] The Missionary Handbook states:

> The money you receive for your [the missionary's] support is sacred and should be spent wisely and only for missionary work. Keep expenses at a minimum. . . . Keep a financial record of all expenditures.

Pet. App. 3a, 33a.

[22] In addition to their express authority to receive contributions for their own support, the record establishes that petitioners' sons had implied authority to do so. The Restatement of Agency states that, unless the parties otherwise agree, the "authority to conduct a transaction includes authority to do acts which are incidental to it, usually accompany it, or are reasonably necessary to accomplish it." *Restatement (Second) of Agency* § 35; see also *id.* § 26 (agency relationship can be implied from the conduct of the parties). Obviously, collection of funds necessary to sustain one's missionary efforts is incidental to the authority to conduct missionary activity.

3. It follows that payments made to support the missionary work of petitioners' sons—within the limits set by the Church—are payments "to" the Church within the meaning of Section 170. It is well established that a charitable contribution made to an agent acting on behalf of the donee is equivalent to a contribution made to the donee. *E.g.*, *Dulin* v. *Commissioner*, 70 F.2d 828, 830 (6th Cir. 1934); *Greer* v. *Commissioner*, 70 T.C. 294, 304 (1978), *aff'd*, 634 F.2d 1044 (6th Cir. 1980); *Skripak* v. *Commissioner*, 84 T.C. 285, 318 (1985); see also 2 J. Mertens, *Law of Federal Income Taxation*, § 10.15 (1982). That is particularly true of a charitable organiaztion, which cannot take any action, including the receipt of gifts or contributions, except through its agents. The Internal Revenue Service, moreover, typically gives charitable organizations wide latitude in designating the agents that are authorized to receive contributions on behalf of the organization.

The rule that a donation to an agent is equivalent to a donation to the charity itself is no less applicable when the agent, pursuant to the organization's instructions, keeps the funds and uses them to further the organization's purposes: "The general rule is applicable even though by the terms creating the agency the principal allows the agent to retain the proceeds collected," 2 J. Mertens, *supra*, § 10.15 at ch. 10, p. 43; see also *Restatement (Second) of Agency* § 71-72 (1958) (agent may collect and retain funds for principal); *Wales* v. *Mower*, 44 Colo. 146, 96 P. 971, 972 (1908) (agent allowed to collect and manage money according to principal's desires). As long as the agent is under the charity's control, it would be senseless to require that donations used to fi-

nance the activities of one of a charity's agents be made in the first instance through a different agent. Therefore, the fact that petitioners' sons used the contributions at issue here to finance their own missionary labors on behalf of (and under the control of) the Church in no way deprives those contributions of their status as contributions "to" the Church within the meaning of Section 170.

IV. THE NINTH CIRCUIT'S DECISION CREATES AN ARBITRARY TAXING SCHEME AND UNDERMINES CONGRESS'S GENERAL PURPOSES IN ENACTING SECTION 170.

One possible explanation for the court of appeals' strained interpretations of the language of Section 170 and Regulation (g) is that the court believed those interpretations would make it easier to administer the tax laws in cases involving contributions to the Church's missionary program. See Pet. App. 10a-11a. However, it is unacceptable to allow Congress's intent in enacting a charitable deduction (which must be construed favorably to the taxpayer, *supra* 14) to be undermined simply to promote administrative convenience. It is particularly unacceptable where, as here, the specific concerns articulated by the court of appeals do not withstand analysis, and where the resulting rules are inherently arbitrary and contrary to the spirit of religious accommodation that is one of this Nation's most cherished traditions.

Even if they were relevant, none of the administrative concerns apparently relied upon by the court of appeals remotely supports its decision. Contrary to the court of appeals' suggestion, there is no realistic possibility that "church members" in high tax brackets [w]ould contribute large amounts to their children . . . and claim the amount was contributed to support charitable activity." Pet. App. 10a-11a. Under the rule proposed by petitioners, the parents' charitable contribution deduction would be limited to the amount specified by the Church for their child's mission area, and parents would have the burden of establishing that their contributions were within the Church's guidelines. The Church, moreover, has strong incentives to keep the specified amounts low. See, *supra* 6, 17-20, 23-30, 32-35. Brief of *Amicus Curiae* at 12. Nor is there any merit to the court of appeals' unsupported suggestion that "deductions properly claimed by low tax bracket missionaries would shift to donees in higher tax brackets." A "low tax bracket missionary" supported by his or her parents or by another benefactor cannot "properly" claim *any* deduction for expenses that are paid by someone else, particularly given that direct missionary contributions are not considered income to the missionary. See Rev. Rul. 62-113, 1962-1 C.B. 10. Accordingly, there can be no "shifting" of tax deductions from missionaries to donors. By the same token, the only way an improper 'double deduction" (Pet. App. 11a) can arise is if the missionary improperly claims a deduction for living expenses that are paid (and deducted) by someone else. But requiring that contributions be made through the Church rather than directly to the missionary does nothing to reduce the possibility of that kind of abuse.[23]

The court of appeals' decision not only lacks any administrative justification, it also creates rules that are inherently arbitrary in their treatment of taxpayers. For instance, if petitioners (or other taxpayers) had contributed money for Benjamin and Cecil's support directly to the Church, those contributions would be deductible as

[23] The same is true of the remaining potential abuse that appeared to concern the court of appeals, *viz.*, that parents might claim a missionary as a dependent while also claiming a charitable deduction for missionary contributions. Pet. App. 11a. Obviously, that could happen just as easily (and perhaps more easily) if the parent made missionary contributions directly to the Church rather than to the missionary.

contributions "for the use of" the Church under the court of appeals' reasoning. See Pet. App. 9a. Similarly, if one of petitioners' sons had had sufficient resources, and had financed his own mission (as many Church missionaries do), amounts expended in connection with his missionary service would be deductible as unreimbursed expenditures under the decision below. See Pet. App. 13a. The Ninth Circuit's decision denies a deduction in this case only because (a) the missionary service undertaken by petitioners' sons was financed by someone other than the missionaries themselves, and (b) petitioners sent their contributions directly to the missionaries rather than sending them to the Church for transmittal to the missionaries.

From the standpoint of tax policy, such a rule obviously exalts form over substance. As previously noted (*supra* 27-28), the purpose of the charitable contribution deduction is to encourage support for qualified charitable organizations like the Church. No one disputes that the direct benefit to the Church's missionary effort is the same (1) whether the missionary's labors are financed by the missionary or someone else, and (2) whether outside contributions for the purpose of supporting the missionary's labors are sent to the Church, in the first instance, or directly to the missionary. Similarly, the Church has the same amount of control over the uses to which missionary contributions are put, regardless of whether those contributions come from the missionary himself or from third parties, and regardless of whether those contributions are made directly to the missionary or to the Church. See *supra* 17-20.[24]

[24] If anything, the Church has *less* control over the amounts properly claimed as a deduction by missionaries who support themselves than by third party benefactors. As previously explained, payments made by third party benefactors (including parents) would, under the rule proposed by petitioners, be deductible only up to the amounts specified by the Church for each mission area during a given year. *Supra* 7. Deductions by missionaries who expend their own funds in missionary service would not be subject to that limitation under the Internal Revenue Service's usual application of Regulation (g).

Aside from its unfairness to taxpayers, the only consequence of the court of appeals' decision is to force the Church to choose between its 160-year tradition of direct missionary contributions, on the one hand, and continued tax deductions for those who, in keeping with that tradition, contribute money directly to the Church's missionaries. If the Church bowed to the pressure created by the court of appeals' decision to centralize the collection and distribution of missionary support payments, the court of appeals' rule would produce exactly the same effect on tax revenues as the rule proposed by petitioners: Parents (or others) contributing money to support a missionary child would be allowed to take a deduction only up to the amount specified by the Church for the mission area. But such a choice would disserve the Church and its religious mission: It would unquestionably increase the Church's administrative and financial burdens. Brief of *Amicus Curiae* at 13-14; Pet. App. 3a, 32a. It would largely destroy the tradition of an unpaid, lay missionary force that has been carefully nurtured during the Church's 160-year history. See Brief of *Amicus Curiae* at 5. It would attenuate the financial bonds between a missionary and his or her family, thereby curtailing the beneficial effects of a mission on the missionary's family. *Id.* at 12; Pet. App. 32a. It would make it more difficult for the Church to help its missionaries keep their expenses down. Brief of *Amicus Curiae* at 12-13, Pet. App. 32a. And it could well create visa and tax problems for missionaries serving in some foreign countries. Brief of *Amicus Curiae* at 13.

Under the applicable rules of statutory construction (*supra* 14), the Church cannot properly be put to the Hobson's choice proposed by the court of appeals without a clear expression of congressional intent to inter-

fere with the Church's traditional method of fulfilling its religious purposes. Certainly no such choice is compelled by Section 170 or, indeed, Regulation (g). Both of those provisions plainly *permit* a deduction for the contributions at issue here.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

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